

AMENDED IN ASSEMBLY MARCH 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1051**

**Introduced by Assembly Member Goldberg**

February 20, 2003

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An act to amend Section 54999.1 of, and to add Sections 54999.7 and 54999.8 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, as amended, Goldberg. Capital facilities fees.

Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility.

This bill would revise the definition of the term “*public utility service*.” *It would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory charge, including, but not limited to, a connection fee, as defined, capacity charge, as defined, or both. The bill would require any judicial action or proceeding to seek a refund of a capital facilities fee, or service rate-or, commodity charge, as defined, or surcharge, as defined, or increase, or challenging the validity of a capital facilities fee, service rate-or, commodity charge, or surcharge, or increase, paid by a public agency to be commenced as specified. It would require any action by a public utility service provider to be in accordance with specified law, and would place on the public agency*

imposing the ~~fee, rate, capital facilities fee, service rate, commodity charge, or surcharge, or increases~~ increase, the burden of producing evidence, as prescribed.

The bill, notwithstanding any of the existing provisions relating to the imposition of a capital facilities fee, would authorize a public agency that provides public utility service to charge a public agency service rates or charges, on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, including the costs of operation, maintenance, construction, repair, replacement, or rehabilitation of facilities, or debt service payments on facilities, not in excess of ~~the reasonable cost of fees for~~ providing the public utility service.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 54999.1 of the Government Code is  
2 amended to read:

3 54999.1. For purposes of this chapter:

4 (a) “Actual construction costs” includes the cost of all  
5 activities necessary or incidental to the construction of a public  
6 utility facility, such as financing, planning, designing, acquisition  
7 of property or interests in property, construction, reconstruction,  
8 and rehabilitation.

9 (b) “Capacity charge” means a charge imposed on customers  
10 who are requesting new public utility services and that is designed  
11 to recover costs of public utility facilities necessary to serve new  
12 customers.

13 (c) (1) “Capital facilities fee” means any nondiscriminatory  
14 charge imposed to pay for public utility facilities, including, but  
15 not limited to, a connection fee, a capacity charge, or both.  
16 “Capital facilities fee” does not include a service rate, *commodity*  
17 charge, or surcharge, *or any capital component thereof*.

18 ~~(2) A capital facilities fee is imposed on the date on which the~~  
19 ~~statement of charges for a public utility service is mailed or~~  
20 ~~otherwise transmitted to the public agency that is receiving or will~~  
21 ~~receive the public utility’s service.~~

1 (2) *A capital facilities fee, service rate, commodity charge, or*  
2 *surcharges is imposed on the date on which the fee, rate, charge, or*  
3 *surcharges is adopted by the public agency imposing it.*

4 (d) “Connection fee” means a fee for the physical facilities  
5 necessary to connect a public agency facility to a public utility,  
6 including, but not limited to, meters, meter boxes, and pipelines to  
7 make the connection, that does not exceed the actual cost of labor  
8 and materials for the installation of those facilities.

9 (e) “Nondiscriminatory” means that the capital facilities fee  
10 does not exceed ~~an~~ *a proportionate* amount determined on the  
11 basis of the same objective criteria and methodology applicable to  
12 comparable ~~nonpublic users, and is not in excess of the~~  
13 ~~proportionate share of the cost of the public utility facilities of~~  
14 ~~benefit to the person or property being charged, based upon the~~  
15 ~~proportionate share of use of those facilities.~~ *nonpublic users.*

16 (f) “Public agency” means the United States or any of its  
17 agencies, the state or any of its agencies, the Regents of the  
18 University of California, a county, a city, a district, a public  
19 authority, or any other political subdivision or public corporation  
20 of this state.

21 (g) “Public utility facility” means a facility for the provision  
22 of water, light, heat, communications, power, or garbage service,  
23 for flood control, drainage or sanitary purposes, or for sewage  
24 collection, treatment, or disposal.

25 (h) “Public utility service” means service ~~provided from a~~  
26 ~~public utilities facility.~~ *for water, light, heat, communications,*  
27 *power, or garbage, or for flood control, drainage or sanitary*  
28 *purposes, or sewage collection, treatment, or disposal, provided*  
29 *by a public agency.*

30 (i) ~~“Service rate or charge” means a rate or charge imposed~~

31 (i) “Service rate” or “commodity charge” means a rate or  
32 charge billed on a monthly or periodic basis to all users to recover  
33 the costs of providing public utility services to those users,  
34 including the costs of operation, maintenance, construction,  
35 repair, replacement, or rehabilitation of facilities, or debt service  
36 payments on facilities.

37 (j) “State agency” or “state” means any state office,  
38 department, division, bureau, board, or commission.

(k) (1) “Surcharge” means any additional charge or charges assessed *billed* on a monthly or periodic basis to all customers of a public utility service provider for a particular purpose.

(2) A surcharge may be included in the same billing statement as the service rate or *commodity* charge.

SEC. 2. Section 54999.7 is added to the Government Code, to read:

54999.7. (a) Any judicial action or proceeding to seek a refund of a capital facilities fee, service rate ~~or~~, *commodity* charge, or surcharge, or increase in any of those costs, or challenging the validity of a capital facilities fee, service rate ~~or~~, *commodity* charge, or surcharge, or increase, imposed on or after January 1, 2004, by a public agency pursuant to this chapter, shall be commenced within 120 days of the effective date of the imposition of the ~~fee, rate, capital facilities fee, service rate, commodity~~ charge, or surcharge, or increase.

(b) Any action by a public agency under this chapter to validate an ordinance, resolution, or motion *imposing or increasing a capital facilities fee, service rate, commodity charge, or surcharge* shall be in accordance with Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. However, any action by a public agency imposing or increasing the ~~fee, rate, capital facilities fee, service rate, commodity~~ charge, or surcharge may be commenced no earlier than 120 days from the effective date of the imposition of the ~~fee, rate, capital facilities fee, service rate, commodity~~ charge, surcharge, or increase. The public agency imposing or increasing the ~~fee, rate, capital facilities fee, service rate, commodity~~ charge, or surcharge shall have the burden of producing evidence to establish that it is nondiscriminatory and that, *in the case of capital facilities fees*, the amount of the ~~fee, rate, charge, surcharge, capital facilities fee~~ or increase does not exceed the amount necessary to provide capital facilities for which the fee is charged.

SEC. 3. Section 54999.8 is added to the Government Code, to read:

54999.8. Notwithstanding any other provision of this chapter, a public agency that provides public utility service may charge a public agency monthly or periodic service rates, *commodity* charges, or surcharges, on the basis of the same objective criteria and methodology applicable to comparable nonpublic users,

1 including the costs of operation, maintenance, construction,  
2 repair, replacement, or rehabilitation of facilities, or debt service  
3 payments on facilities, that are not in excess of the reasonable cost  
4 of *reasonable fees for* providing the public utility service.

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